



CHEN ZHI LU a.k.a. ALISON TAN
and THOMAS B. CO.,
Petitioners,

-versus-

HENRY SY,
Respondent- Registrant.

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}
} IPC No. 14-2009-00182
} Petition for Cancellation:
} Registration No: 4-2008-004616
} Date Registered: 27 October 2008
} TM: "BOSI TOOLS AND
} DESIGN"
}

NOTICE OF DECISION

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Potrero, Malabon

HENRY SY
Respondent-Registrant
Stall B-1 B2, Plaza Miranda Mall
Carriedo, Quiapo
Manila

GREETINGS:

Please be informed that Decision No. 2014 - 159 dated June 19, 2014 (copy enclosed) was promulgated in the above entitled case.

Taguig City, June 19, 2014.

For the Director:


Atty. EDWIN DANILO A. DATING
Director III
Bureau of Legal Affairs



**CHEN ZHI LU a.k.a. ALISON TAN
and THOMAS B. CO,**
Petitioners,

IPC No. 14-2009-00182
Petition for Cancellation:

-versus-

Registration No. 4-2008-004616
Date Registered: 27 October 2008
Trademark: **"BOSI TOOLS AND
DESIGN"**

HENRY SY,
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Decision No. 2014 - 159

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DECISION

CHEN ZHI LU a.k.a. ALISON TAN and THOMAS B. CO. ("Petitioners")¹, filed on 24 July 2009 a petition for cancellation of Trademark Registration No. 4-2008-0046616. The registration, issued to HENRY SY ("Respondent-Registrant")², covers the mark "BOSI TOOLS AND DESIGN" for use on goods under class 08³ for plier, cutting plier, screwdriver, screw wrencher, scissor, gardening shears, scissors and metal cutting scissors.⁴

The Petitioners allege:

"3. Petitioners learned only sometime in late May 2009 that a Certificate of Registration numbered 4-2008-004616 was applied for and issued in favour of respondent on October 27, 2008 for the mark 'BOSI TOOLS AND DESIGN', when respondent wrote the former a letter directing them 'to refrain from advertising, selling, trading and marketing the set of pliers, cutting pliers, screwdrivers, screw wrenches, scissors, gardening shears and scissors, and metal cutting scissors' bearing the mark with 'stylized letters 'B' and 'S' on top of each other with the words 'BOSI TOOLS' below'.

"4. It must be stressed, however, that the several carpentry goods/tools bearing the mark 'BOSI TOOLS', were mere imports from BOSI TOOLS CO. of China Guang Dong Sheng (Fo Shan City), which is neither owned nor produced by respondent HENRY SY.

"5. Petitioners now stand to suffer damage and prejudice as respondent who, being also a mere importer of the goods in issue, threatens to restrain and sue the petitioners for competing and selling the same imported goods bearing the mark 'BOSI TOOLS'.

"6. The approval in question is contrary to Section 123 (d), (e) and (f) of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines, x x x.

x x x

"8. The registration of the mark in issue will not only violate the rights of its (first) registered owner, manufacturer and exporter, BOSI TOOLS CO., under the principle of reciprocity, but also

¹ With business address at Stall B31-B32, Plaza Miranda Mall, Carriedo, Quiapo, Manila.

² With business address at Stall B1-B2, Plaza Miranda Mall, Carriedo, Quiapo, Manila.

³ The Nice Classification of goods and services is for registering trademark and service marks, based on a multilateral treaty administered by the WIPO, called the Nice Agreement Concerning the International Classification of Goods and Services for Registration of Marks concluded in 1957.

⁴ Trademark Registration Certificate No. 4-2008-004616 was issued on 27 October 2018.

the rights of herein petitioners to a fair competition and against monopoly as well as the right to sell 'BOSI' tools/products of all models and designs in accordance with the authorization given to them by the registered owner, manufacturer and exporter of the 'BOSI'-marked goods, BOSI TOOLS CO.

x x x

"10. With the registration of 'BOSI TOOLS' products under the name of respondent although he is not the owner nor manufacturer of the same goods, petitioners now stand to suffer damage and prejudice as they are now being harassed by their business competitor, the respondent, who also happened to be merely importing the 'BOSI TOOLS' products from China.

The Petitioner's evidence consists of the following:

1. Exhibit "A" - copy of "authorization" given to Petitioner Chen Zhi Lu to sell "BOSI" tools by BOSI TOOLS CO.;
2. Exhibit "B" - copies of pictures of various "BOSI TOOLS" products from China which pertain to the same goods, packaging, mark and style registered in the name of Respondent-Registrant;
3. Exhibit "C" - documents on the purchase and/or importation of various products bearing the mark "BOSI TOOLS"; and,
4. Exhibit "D" - copy of the Respondent-Registrant's letter-demand to Petitioner Chen Zhi Lu to refrain from selling and marketing various imported "BOSI TOOLS" products.

This Bureau issued and served upon the Respondent-Registrant a Notice to Answer on 28 August 2009. The Respondent-Registrant, however, did not file an answer.

Should the Respondent-Registrant's registration of the mark BOSI TOOLS AND DESIGN be cancelled?

Records show that the Respondent-Registrant filed his trademark application for BOSI TOOLS AND DESIGN on 21 April 2008 and was issued registration on 27 October 2008. In this regard, the certificate of registration issued to the Respondent-Registrant⁵, constitutes *prima facie* evidence of the validity of the registration and his ownership of the mark and exclusive right to use it in connection with the goods or services and those that are related thereto as specified in the certificate.⁶ Thus, the Petitioners, as the parties asking for the cancellation of the Respondent-Registrant's registration, has the burden to show that the latter is not the owner of disputed mark.

In this regard, the Petitioners' evidence is not sufficient to over come the presumption of ownership of the mark BOSI TOOLS AND DESIGN enjoyed by the Respondent-Registrant by virtue of Registration No. 4-2008-004616. The pieces of evidence presented by the Petitioners do not support the allegation that the Respondent-Registrant is not the owner of the trademark but merely an importer of goods bearing the mark. The undated Authorization Letter issued by China Guang Dong Sheng (Fo Shan City) Bosi Tools Co.⁷, bears no information that the latter is the owner and manufacturer of products bearing the mark BOSI TOOLS AND DESIGN. Moreover, the document which was executed abroad should have been authenticated.⁸ Also, the various pictures of BOSI TOOLS products⁹ do state or indicate

⁵ Certificate of Registration No. 4-2008-004616 issued on 27 October 2008.

⁶ Sec. 138, R.A. 8293 or IP Code.

⁷ Exhibit "A" of Petitioners.

⁸ Sec. 20 Rule 132, Revised Rules of Court.

the owner or manufacturer thereof. Likewise, the documents on the purchases and/or importations of BOSI TOOLS¹⁰ are bereft of information as regards the parties, either as consignee or payor, nor show the connection between the Respondent-Registrant and the alleged transactions.

Basic is the rule that mere allegation is not evidence and not equivalent to proof. The Supreme Court has stressed time and again that allegations must be proven by sufficient evidence because mere allegation is definitely not evidence.¹¹

WHEREFORE, premises considered, the instant petition is hereby **DISMISSED**. Let the filewrapper of Trademark Registration No. 4-2008-004616 be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 19 June 2014.



Atty. NATHANIEL S. AREVALO
Director IV, Bureau of Legal Affairs

⁹ Exhibits "B", "B-1" to "B-3" of Petitioners.

¹⁰ Exhibits "C", "C-1" to "C-6" of Petitioners.

¹¹ Renato Real v. Sangu Philippines and/or Kitchi Abe, G.R. No. 168757, 19 January 2011.